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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 UNITED STATES OF AMERICA,
10 Plaintiff,
11 v.
12 TINA M. HOLSTROM,
13 Defendant.

14 NO. CR-05-6026-EFS
15

16 **ORDER GRANTING DEFENDANT'S
17 MOTION TO DISMISS**

18 On November 4, 2005, the Court held a pretrial conference in the
19 above-captioned case and heard argument on Defendant Tina Holstrom's
20 Motion to Dismiss (Ct. Rec. 16). Ms. Holstrom was present for the
21 hearing and represented by Ms. Rebecca Pennell. Mr. Jared Kimball
22 appeared on behalf of the Government. After considering the parties'
23 arguments and relevant authority, the Court is fully informed on the
24 issues and hereby grants Ms. Holstrom's Motion to Dismiss.

25 **I. Background**

26 In September 2000, Ms. Holstrom was hired by Battelle Memorial
27 Institute ("Battelle") to work as a Science and Engineering Associate for
28 Battelle at the Pacific Northwest National Laboratory ("PNNL"). Pursuant
29 to a contract, Battelle operated the PNNL as the prime contractor for the
30 United States Department of Energy ("DOE") at PNNL (the "PNNL Contract").

1 During her employment at PNNL, Ms. Holstrom was supervised at different
2 times by two different Battelle managers, who were responsible for
3 certifying Ms. Holstrom's time cards for Battelle's payroll system and
4 conducting Ms. Holstrom's performance reviews. It is undisputed that at
5 all times, Ms. Holstrom was an employee of PNNL as operated by Battelle,
6 not the federal government.¹ In fact, the PNNL Contract explicitly
7 assigns responsibility for employees to Battelle: "[t]he Contractor shall
8 be responsible for maintaining satisfactory standards of employee
9 competency, conduct, and integrity and shall be responsible for taking
10 such disciplinary action with respect to its employees as may be
11 necessary." (Ct. Rec. 52-2, Ex. J, I-78(c), 1-101.) PNNL's offer of
12 employment to Ms. Holstrom specifically noted that her employment was at
13 will under the laws of the State of Washington and nothing therein
14 explicitly stated or implied that she was an employee of the federal
15 government. (Ct. Rec. 52-2, Ex. K.)

16 In February 2005, Battelle's Internal Audit Department ("Audit
17 Department") conducted an investigation into whether Ms. Holstrom was
18 providing truthful information in her electronic Battelle time cards.
19 As a result of this investigation, the Audit Department ultimately
20 concluded Ms. Holstrom, by providing false information in her electronic
21 time cards, had received \$42,671.42 in wages for days she had not worked

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23 ¹ As the Court explains below, when reading the PNNL Contract, the
24 offer of employment, and the termination letter together, the Court
25 concludes, as a practical matter, it is correct to refer to Ms. Holstrom
26 as an employee of Battelle.

1 and caused a total loss of \$96,600.00 to PNNL's overhead account.
2 Pursuant to the PNNL Contract, Battelle's bank is allowed to draw money
3 directly from the United States Treasury for operational costs, i.e.
4 employee payroll, associated with the PNNL Contract between Battelle and
5 DOE.

6 At the conclusion of the Audit Department's investigation, Ms.
7 Holstrom's employment with Battelle at PNNL was terminated in a
8 memorandum issued by Battelle on Battelle stationery. [Doc.17-1, Ex.G]
9 Thereafter, the Audit Department forwarded its investigative report of
10 Ms. Holstrom's alleged misconduct to DOE's Office of Inspector General
11 ("DOE-OIG"), which began its own investigation of the alleged false
12 statements contained in Ms. Holstrom's electronic time cards. During an
13 interview with DOE-OIG special agents, Ms. Holstrom purportedly admitted
14 she had falsely completed her electronic time cards.

15 Ms. Holstrom was indicted for making materially false statements in
16 violation of 18 U.S.C. § 1001. Specifically, the Government alleges Ms.
17 Holstrom knowingly and willfully falsified electronic time cards for her
18 hours of work at PNNL from January 1, 2003, to February 25, 2005, and
19 because this conduct allegedly fell within the jurisdiction of DOE, a
20 federal agency, the conduct is criminally punishable under § 1001.

21 **II. Analysis**

22 The Government "must prove five elements to obtain a conviction for
23 making a false statement under § 1001: (1) a statement, (2) falsity, (3)
24 materiality, (4) specific intent, and (5) agency jurisdiction." *Id.*
25 (citing *United States v. Boone*, 951 F.2d 1526, 1544 (9th Cir. 1991)).
26 In her motion, Ms. Holstrom claims the Government is unable to prove the

1 fifth element of its § 1001 charge because, as she argues, her alleged
2 false statements were not made within DOE's jurisdiction. Thus, to avoid
3 dismissal of its § 1001 charge against Ms. Holstrom, the Government must
4 establish Ms. Holstrom's alleged false statements were made "within the
5 jurisdiction of a department or agency of the United States." *United
6 States v. Camper*, 384 F.3d 1073, 1075 (9th Cir. 2004).

7 **A. Supreme Court Guidance**

8 The term "jurisdiction," as used in § 1001, is not statutorily
9 defined. However, the Supreme Court has provided guidance on the term's
10 meaning and scope. First, the Supreme Court stressed that "the term
11 'jurisdiction' should not be given a narrow or technical meaning for
12 purposes of § 1001." *Bryson v. United States*, 396 U.S. 64, 70 (1969).
13 Second, for jurisdiction to exist under § 1001, the federal department
14 or agency must have "the power to exercise authority in [the] particular
15 situation" in which the false statement arose. *United States v. Rodgers*,
16 466 U.S. 475, 479 (1984); accord *United States v. Green*, 745 F.2d 1205,
17 1208 (9th Cir. 1985) (the false statement must "relate to a matter in
18 which a federal agency has power to act"). Thus, false statements are
19 subject to § 1001 prosecution only when they "concern the 'authorized
20 functions of an agency or department' rather than 'matters peripheral to
21 the business of that body.'" *United States v. Fachinni*, 874 F.2d 638, 641
22 (9th Cir. 1989) (quoting *Rodgers*, 466 U.S. at 479).

23 **B. Ninth Circuit Guidance**

24 In rulings consistent with the cited Supreme Court authority, the
25 Ninth Circuit has provided additional guidance on the meaning and scope
26 of "jurisdiction" as used in § 1001.

1 **1. *United States v. Facchini***

2 In *Facchini*, the Ninth Circuit analyzed § 1001's jurisdiction
3 requirement in the context of false statements made by individuals
4 seeking benefits from a state unemployment compensation agency ("state
5 agency"). 874 F.2d at 638. The court in *Facchini* divided the case's
6 defendants into two classes: (1) those who made false statements to
7 obtain benefits *funded by the state government* and distributed by the
8 state agency ("Class One") and (2) those defendants who made false
9 statements to obtain benefits *funded by the federal government*, but
10 distributed by the state agency ("Class Two"). *Id.* at 640-41.
11 Ultimately, the Ninth Circuit ruled the false statements made by Class
12 One defendants were not within the jurisdiction of a federal agency,
13 while the false statements made by the Class Two defendants were. The
14 court's ruling was primarily based on its findings that no "direct
15 relationship" existed between the Class One defendants' false statements
16 and an authorized function of a federal agency or department, while a
17 "direct relationship" did exist with regard to the Class Two defendants'
18 false statements. *Id.* at 641-43. To understand the Ninth Circuit's
19 decision in *Facchini* it is necessary to understand the distinct
20 relationships existing between the federal government and state agency
21 with regard to the funding of unemployment benefits and extended
22 unemployment benefits and the administrative costs of the state agency.

23 By federal statute, the state was permitted to create and implement
24 an unemployment compensation program approved by the United States
25 Secretary of Labor. *Id.* at 640. Once approved, the state agency was
26 allowed to award state funds to eligible individuals and began receiving

1 federal administrative funds for operational costs. *Id.* Additionally,
2 by statute, the Secretary of Labor was authorized to monitor the
3 administrative structure of the state program and could stop payment of
4 administrative funds if the state improperly denied benefits. *Id.* at 640-
5 42. Despite this power, the Secretary of Labor was not permitted to
6 monitor the state program's actual operations or withhold administrative
7 funds if the state improperly awarded benefits on fraudulent claims. *Id.*
8 at 642. In short, applicants received unemployment benefits funded by
9 the state; the federal government funded the state program's
10 administrative costs, not these initial unemployment benefits.

11 By comparison, the Class Two defendants received unemployment
12 benefits funded by a federally established program that was administered
13 by the state agency ("federal program"). *Id.* at 640-41. The federal
14 program provided federal benefits to eligible individuals after they
15 exhausted their right to benefits under the state program. *Id.* In
16 contrast to state program applicants, federal program applicants were
17 expressly made subject to § 1001 prosecution for false statements made
18 in attempting to obtain federally-funded benefits. *Id.* at 643 (citing 26
19 U.S.C. § 3304).

20 Based on the Secretary of Labor's limited oversight of the state
21 program and inability to act in response to false statements made to the
22 state agency, the Ninth Circuit in *Facchini* found there was no direct
23 relationship between the Class One defendants' false statements and an
24 authorized function of the Secretary of State. *Id.* at 642. Instead, the
25 Class One defendants' false statements were deemed to have been merely
26 "peripheral" to the Secretary of Labor's monitoring function. *Id.* As

1 such, the Class One defendants' false statements did not fall within the
2 Secretary of Labor's jurisdiction for § 1001 purposes. *Id.*

3 However, as to the Class Two defendants' false statements, the court
4 in *Facchini* arrived at the opposite conclusion. In differentiating
5 between the two classes of defendants, the court emphasized the
6 Government's statutory authority to prosecute the Class Two defendants
7 under § 1001 and the fact that federal funds were used to pay benefits.
8 *Id.* at 643. The court believed the federal source of funds created a
9 "direct relation between the falsity of [the] statements and the
10 Department of Labor's statutory function of certifying the payment of
11 federal money for unemployment compensation." *Id.*

12 **2. Other Federal Benefit Cases**

13 The Ninth Circuit's decision in *Facchini* is consistent with other
14 decisions rendered in similar § 1001 cases where defendants were
15 prosecuted for making false statements to third parties in attempts to
16 fraudulently obtain federal benefits. Like *Rodgers* and *Facchini*, the
17 following cases emphasize the need for a nexus between a false statement
18 and an authorized function of a federal agency or department before
19 § 1001 jurisdiction may be found.

20 For instance, in *United States v. Kraude*, a case rendered prior to
21 the *Rodgers* and *Facchini*, the Ninth Circuit ruled that false statements
22 made to a private health insurance carrier to fraudulently obtain federal
23 medicare payments were within the jurisdiction of the Department of
24 Health, Education, and Welfare because the false statements had a
25 material effect on the department's function, which presumably was to
properly disperse federal medicare benefits. 467 F.2d 37, 38 (9th Cir.

1 1972); accord *United States v. Mantaky*, 482 F.2d 1319, 1322 (9th Cir.
2 1973).

3 Similarly, in *United States v. Stanford*, also decided prior to
4 *Rodgers and Facchini*, the Seventh Circuit held that false statements made
5 to a state agency to fraudulently obtain federally-funded food stamps and
6 Aid to Families with Dependent Children ("AFDC") benefits are within the
7 § 1001 jurisdiction of the Departments of Health, Education, and Welfare
8 and Agriculture based on the strong auditing and oversight powers these
9 federal departments have over the state agencies that disburse federal
10 food stamps and AFDC benefits. 589 F.2d 285, 297 (7th Cir. 1978). In
11 fashioning this decision, the Seventh Circuit emphasized its belief that
12 while Congress had entrusted administration of federal food stamp and
13 ADFC programs to the states, the Departments of Health, Education, and
14 Welfare and Agriculture retained the "ultimate authority" to see that
15 federal funds were properly spent. *Id.*

16 **3. *United States v. Green***

17 In *United States v. Green*, the Ninth Circuit determined the Nuclear
18 Regulatory Commission ("NRC") had jurisdiction over false statements made
19 by the employee (the "defendant") of a potential subcontractor to a
20 governmental prime contractor. 745 F.2d 1205, 1208-09 (9th Cir. 1985).
21 The defendant was the quality assurance director for a company that
22 manufactured chemical coatings. In an attempt to secure a contract with
23 a governmental prime contractor to supply coatings for use in a Level I
24 area of a nuclear power plant, the defendant supplied false safety-test
25 reports to the prime contractor. *Id.* at 1207. The reports related to
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1 safety standards required by the NRC, which the defendant's company was
 2 required to pass before it could be awarded the subcontract. *Id.*

3 In ruling on whether sufficient evidence had been presented at trial
 4 to prove § 1001's jurisdiction requirement, the Ninth Circuit stated:

5 [u]nder section 1001, the false statement need not be made
 6 directly to the government agency; it is only necessary that
 7 the statement relate to a matter in which a federal agency has
 power to act.

8 The test reports falsified by [the defendant] concerned
 9 materials to be used in a Level I area of a nuclear power
 plant. In order for these materials to qualify for use in
 10 Level I, they were required by NRC to pass safety-related
 tests. The jury could have concluded that Green's false
 statements related to a matter which was the concern of a
 11 federal agency.

12 *Id.* at 1208-09. Despite the succinctness of the ruling, its basis rings
 13 clear. The NRC had jurisdiction over the defendant's false statements
 14 to the prime contractor because the statements related to a matter in
 15 which the NRC had the power to act. In other words, there was a direct
 16 relationship between the defendant's false statements and the NRC's
 17 authorized function of ensuring compliance with nuclear safety
 regulations.

18 C. Ruling

19 Based on the rulings described above,² the Court finds Ms.
 20 Holstrom's alleged false statements were not made within DOE's
 21 jurisdiction as required by § 1001. Although PNNL is owned by the United

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 23 ² Because Supreme Court and Ninth Circuit authority provides
 24 adequate guidance on the issues raised in this motion, the Court does not
 25 respond to nor address the Fifth and Eleventh Circuit cases briefed by
 26 the parties.

1 States Government and Battelle has a direct contractual relationship with
2 DOE, nothing before the Court demonstrates that DOE, or any other federal
3 department or agency, had power to act with regard to Ms. Holstrom's
4 alleged falsification of time cards. Instead, the evidence demonstrates
5 Ms. Holstrom's alleged falsification of time cards is peripheral to DOE's
6 obligations and not directly related to any DOE authorized function.

7 Further, the Government has pointed to no express statutory
8 authority to prosecute Ms. Holstrom under § 1001, as was the case for the
9 Class Two defendants in *Facchini* where 26 U.S.C. § 3304 authorized § 1001
10 prosecution. Furthermore, the Government has cited no authority for the
11 proposition that DOE, having hired Battelle to operate PNNL, retained
12 ultimate authority to see that federal funds designated for PNNL
13 operations were properly spent, as was emphasized in *Facchini*, *Kraude*,
14 and *Standford*. Finally, the Government has failed to show that any terms
15 of the PNNL Contract provided DOE with any power to act in response to
16 Ms. Holstrom's alleged falsification of time cards as contrasted to *Green*
17 where the government had the power to act to insure compliance with
18 nuclear safety regulations.

19 To the contrary, the evidence establishes Ms. Holstrom's alleged
20 false statements fall outside DOE's authority to act. The clearest
21 evidence of this is found in the terms of the PNNL Contract in which
22 Battelle and DOE agreed Battelle was wholly responsible "for the total
23 performance under the Contract," including all "disciplinary action with
24 respect to [Battelle's] employees as may be necessary." (Ct. Rec. 52-2
25 at 1 &4.) In light of this PNNL Contract language and upon review of the
26 offer of employment and the termination letter, the Court finds Ms.

1 Holstrom is, for practical purposes, an employee of Battelle.
2 Consequently, because Battelle, not the government, had all power to act³
3 with regard to Ms. Holstrom's alleged false statements on time cards,
4 there is no agency jurisdiction as that term is used in § 1001.
5 Therefore, the Indictment charging Ms. Holstrom with a § 1001 violation
6 must be dismissed.

7 Accordingly, IT IS HEREBY ORDERED:

1. Defendant's Motion to Dismiss (**Ct. Rec. 16**) is **GRANTED**.
 2. All pending motions are **DENIED AS MOOT**.
 3. The **jury trial** set for **January 23, 2005**, is **STRICKEN**.

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter
12 this order and to provide copies to counsel, the U.S. Probation Office,
13 and the Jury Administrator.

14 ||| **DATED** this 14th day of December, 2005.

S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

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³ The Court need not consider whether DOE was authorized to withhold funds from Battelle or in any way punish Battelle for Ms. Holstrom's alleged misconduct since such action would be collateral to and not directly related to the alleged false statements as required for a finding of § 1001 jurisdiction under *Facchini*. 874 F.2d at 640-41.